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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GAIL HALL, as Trustee, etc., Plaintiff and Respondent, v. NANCY MINER, Defendant and Appellant.	D068828 (Super. Ct. No. 37-2012-00152421 PR-TR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Julia Kelety, Judge. Affirmed.

Robert F. Wiggins for Defendant and Appellant.

Henderson, Caverly, Pum & Charney, Kristen E. Caverly and Robert C. Mardian III for Plaintiff and Respondent.

Nancy Miner appeals a judgment entered after a trial in probate court involving the trust estate of her deceased partner, John Williamson. Miner contends the probate court erred by ruling: (1) certain unsigned, undated, handwritten notes purporting to be

Williamson's explanation of his estate plan were inadmissible at trial; (2) Williamson's trust did not grant Miner a compensable life estate in his ranch, where they had cohabited; (3) a loan Miner made to Williamson was not secured by the ranch; and (4) Miner's claim on the unsecured loan was time-barred under a one-year statute of limitations that applies to claims against decedents (Code Civ. Proc., § 366.2). We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

Williamson and Miner began a romantic relationship in about 1996 when he was approximately 63 and she was approximately 48. They were both divorced. Williamson had seven children; Miner had one son, Tim, who was disabled. Williamson separately owned certain real property in Descanso that was improved with a house, a guest apartment, and a workshop (the Ranch). Miner and Tim lived with Williamson at the Ranch and paid him rent of about $1,000 a month.

The Ranch was encumbered by a deed of trust from Wells Fargo that secured a debt of approximately $130,000, which accrued interest at variable rates in excess of 9 percent. In October 2006, Miner loaned Williamson $130,000 to pay off the Wells Fargo loan. They did not document the loan at that time.

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1 Miner's opening brief does not support its factual summary with record citations, as required. (Cal. Rules of Court, rule 8.204(a)(1)(C), (a)(2)(C).) Although this failure entitles us to treat her challenges as forfeited (*Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1037), we decline to do so in light of the relatively small record and Miner's correction of the issue in her reply brief.

About a year and a half later, on March 26, 2008, Williamson memorialized the loan by signing a "promissory note secured by deed of trust and assignment of rents with demand option and security and personal guarantee" (the Note). (Capitalization omitted.) The Note accrued interest at a rate of 6 percent, but provided that "[i]t is the expectations of [Williamson] and [Miner] that no payments will be made until demand for payment is made." "After 90 days of a written demand for full payment, . . . all interest and principle [*sic*]" would be immediately due. Although the Note purported to be "secured by a deed of trust and assignment of rents," it is undisputed that Williamson did not contemporaneously execute any such instruments. (Capitalization omitted.)

A few months later, on June 2, 2008, Williamson created the John Williamson Trust (Trust) and funded it with his personal property and the Ranch. Miner was aware Williamson transferred title to the Ranch to the Trust. The same day, Williamson amended the Trust to clarify the scope of certain rights it granted to Miner regarding her use of the Ranch after his death. We discuss these terms in greater detail below.

Over three years later, on September 29, 2011, Williamson executed a "Deed of Trust and Assignment of Rents" dated as of October 1, 2006, which purported to grant Miner a security interest in the Ranch. Even though the Trust then held title to the Ranch, Williamson executed the deed of trust in his individual capacity, not as trustee. Williamson did not record the deed of trust.

In the winter of 2011, Williamson, Miner, and Miner's son Tim left the Ranch and stayed in a recreational vehicle in Santee Lakes. Williamson was receiving dialysis treatment several times each week and Santee Lakes was closer to the treatment facility.

Williamson died on December 3, 2011. Four days later, Miner recorded the deed of trust. Miner and Tim did not move back to the Ranch, nor did they attempt to rent it out. Instead, Miner purchased and moved into a condo.

Upon Williamson's death, his daughter Gail Hall became trustee of the Trust. The trust estate had insufficient assets to rehabilitate and maintain the Ranch or to pay the Ranch's current and deferred property taxes. On August 13, 2012, Miner demanded payment in full on the Note. The demand warned that if timely payment were not made, Miner "may . . . proceed with foreclosure of [the Ranch]." Miner recognized the trust estate lacked adequate liquid assets to repay the Note.

In light of Miner's threat to foreclose on the Ranch, on October 26, 2012, Hall filed a petition in probate court seeking to quiet title to the Ranch. Among other things, Hall requested that the court order that (1) Miner be enjoined from foreclosing on the Ranch; (2) Miner has no life estate in the Ranch; (3) the Note is unsecured; (4) the deed of trust is void; and (5) Miner turn over possession of the Ranch to Hall. Miner filed an objection to the petition, requesting that the court dismiss the petition so that Miner could pursue an action in the civil department "to foreclose an equitable mortgage" on the Ranch.

In November 2012, Hall filed a motion seeking an order permitting the sale of the Ranch and enjoining Miner from interfering with the preparation and marketing of the Ranch for sale. A few months later, on January 9, 2013, Miner opposed the motion and filed a "cross action to foreclose equitable mortgage." (Capitalization omitted.) The trial court granted Hall's motion, directed her to sell the Ranch, and enjoined Miner from

foreclosing on the Ranch or interfering with its sale. Hall sold the Ranch for $520,000, resulting in about $454,000 net proceeds to the trust estate.

Hall's petition was tried to the court on March 27, 2015.[2] Hall and Miner were the only witnesses. Although the court admitted in evidence exhibits offered by both sides, the court excluded an exhibit offered by Miner that purported to be Williamson's handwritten notes explaining his estate plan. After the parties rested, the court directed them to submit supplemental briefing on the key disputed issues.

After considering the supplemental briefs and hearing argument from counsel, the trial court rendered its statement of decision. The court concluded (1) Miner has no life estate in the Ranch; (2) the Note did not create an equitable mortgage and was, thus, unsecured; (3) Miner was not entitled to equitable subrogation; (4) the deed of trust was void and cancelled; and (5) Miner was time-barred from recovering on the unsecured Note because she did not satisfy the one-year limitation period for submitting a creditor's claim or commencing an action. The court entered judgment, and Miner appealed.

DISCUSSION

I. *Admissibility of the Handwritten Notes*

Miner contends the trial court erred by excluding the exhibit that purported to be Williamson's handwritten notes explaining his estate plan (Exhibit 58). We disagree.

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2 The record does not indicate whether Miner's "cross action to foreclose equitable mortgage" was also tried. (Capitalization omitted.) However, by adjudicating the relief requested in the petition—particularly the request that the court deem the Note unsecured and the deed of trust void and cancelled—the court necessarily also adjudicated the relief requested in Miner's cross-action.

A. *Background*

When Hall filed her petition, she attached Exhibit 58 and characterized it as "[Williamson]'s handwritten explanation of the meaning of the life estate conveyance to Ms. Miner." Miner objected to the petition on the basis (among others) that Exhibit 58 is "an unsigned, undated writing purported to be handwritten by . . . Williamson." Miner argued the cited excerpt from Exhibit 58 "varies markedly from that contained in the trust[,] which has been witnessed, signed, and notarized."

At trial, however, Miner sought to introduce Exhibit 58 during Hall's testimony. Hall identified Williamson's handwriting, but expressed concern that Miner had not provided her with the document until six weeks after Williamson's death. When Miner's counsel asked Hall whether she thought the exhibit reflected her father's intent, Hall's counsel objected that the question was "vague as to time." The trial court sustained the objection on relevance grounds, explaining "I don't know that the intentions of [Williamson] are at issue." Miner's counsel responded, "Well, it might go to the state of mind of . . . Hall when she made the decision of what she wanted to do." The court explained Hall's state of mind was irrelevant to the "few simple issues" before the court.

When Miner's counsel asked Hall again whether she thought Exhibit 58 reflected her father's intent, the trial court again sustained an objection on relevance grounds. The court added, "This is not a trust amendment, right? We all agree to this? Here's the deal: Unless . . . the deed of trust or the promissory note have any latent or patent ambiguities such that we need to consider the testator's intent, then everything else is irrelevant. And I'm not going to accept extrinsic evidence to construe the document. [¶] So in other

words, the yardstick by which we measure the trustee's conduct is, in fact, the trust and the other documents, not some writing of the decedent." Miner's counsel responded, "I agree, Your Honor."

B. *Relevant Legal Principles*

Only relevant evidence is admissible. (Evid. Code, §§ 350, 351.) Relevant evidence is evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (*Id.*, § 210.) "The law vests wide discretion in the trial court to decide the relevance of proffered evidence." (*Smith v. Brown-Forman Distillers Corp.* (1987) 196 Cal.App.3d 503, 519.) Accordingly, we " 'review[] any ruling by a trial court as to the admissibility of evidence for abuse of discretion.' " (*Dart Industries, Inc. v. Commercial Union Ins. Co*. (2002) 28 Cal.4th 1059, 1078.)[3] Moreover, in reviewing an order excluding evidence, we will affirm the ruling if it was proper on any ground. (*Philip Chang & Sons Associates v. La Casa Novato* (1986) 177 Cal.App.3d 159, 173; *Ceja v. Department of Transportation* (2011) 201 Cal.App.4th 1475, 1483.)

C. *Analysis*

Miner argues the trial court erred by excluding Exhibit 58. She contends that under new case law, extrinsic evidence is admissible to determine Williamson's intent

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3 Miner's opening brief does not identify the applicable standard of appellate review for any of the challenges she asserts. Although this failure entitles us to treat her challenges as forfeited (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021), we decline to do so in light of the well-established standards of review applicable to each challenge.

regardless of whether the Trust is ambiguous. (See *Estate of Duke* (2015) 61 Cal.4th 871, 875 ["we hold that an unambiguous will may be reformed if clear and convincing evidence establishes that the will contains a mistake in the expression of the testator's intent at the time the will was drafted and also establishes the testator's actual specific intent at the time the will was drafted"].) We are not persuaded.

Even assuming extrinsic evidence would theoretically have been otherwise admissible to determine Williamson's intent, the trial court did not abuse its discretion by excluding Exhibit 58 on relevance grounds. As *Miner* first pointed out in her objection to Hall's petition, the exhibit is undated. This is particularly significant in light of (1) the vast time period over which events transpired—Williamson took the loan from Miner in 2006, signed the Note in March 2008, created the Trust in June 2008, and signed the deed of trust in 2011—and (2) Miner's objection to Hall's petition on the basis that at least one portion of Exhibit 58 "varies markedly" from the Trust's language in certain respects. Absent a date or any other evidence fixing the time of the exhibit's creation, and given Hall's concern about the circumstances under which Miner provided her with the document, the trial court could properly have found the exhibit lacked probative value—and, thus, relevance—as to the particular time at which it reflected (if at all) Williamson's state of mind. Consequently, the trial court did not abuse its discretion in excluding Exhibit 58.

II. *No Equitable Mortgage on the Ranch*

Miner contends the trial court erred by concluding she was not entitled to an equitable mortgage on the Ranch by virtue of the Note. We review the trial court's

exercise of its equitable powers for an abuse of discretion. (*Branscomb v. JPMorgan Chase Bank, N.A.* (2014) 223 Cal.App.4th 801, 806; *Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 771; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256.) "Under that standard, we resolve all evidentiary conflicts in favor of the judgment and determine whether the court's decision ' "falls within the permissible range of options set by the legal criteria." ' " (*Hirshfield*, at p. 771.) We find no such abuse.

Miner argued below that it was her and Williamson's intent that the Note be secured by the Ranch. And although the 2008 Note documenting the 2006 loan references a deed of trust, Miner's counsel acknowledged below that Williamson's 2011 deed of trust "wasn't offered in evidence because it was some years later, and I don't think it would have had an effect since it was not executed at the time of the note." Nevertheless, relying entirely on *Coast Bank v. Minderhout* (1964) 61 Cal.2d 311 (*Coast Bank*), Miner argued she was entitled to an equitable mortgage on the Ranch. Miner invoked the following passage from *Coast Bank*:

> " '[E]very express executory agreement in writing, whereby the contracting party sufficiently indicates an intention to make some *particular property*, real or personal, or fund, *therein described or identified*, a security for a debt or other obligation . . . creates an equitable lien upon *the property so indicated*, which is enforceable against the property in the hands not only of the original contractor, but of his . . . purchasers or encumbrancers with notice.' [Citation.] Thus, a promise to give a mortgage or a trust deed on *particular property* as security for a debt will be specifically enforced by granting an equitable mortgage. [Citations.] An agreement that *particular property* is security for a debt also gives rise to an equitable mortgage even though it does not constitute a legal mortgage. [Citations.] If a mortgage or trust deed is defectively executed, for example, an equitable mortgage will be recognized. [Citations.] Specific mention of a security interest is unnecessary if

> it otherwise appears that the parties intended to create such an interest." (*Id.*, at pp. 313-314, italics added.)

The trial court found Miner's reliance on *Coast Bank* unavailing, explaining the Note was insufficient to create an equitable mortgage because the Note did not identify the specific property to be encumbered, as required by *Coast Bank*.

Similarly, on appeal, Miner continues to acknowledge the insufficiency of the deed of trust, and relies almost exclusively on *Coast Bank* to support her claim of an equitable mortgage. As did the trial court, we too find her reliance unavailing. As *Coast Bank* makes clear, for an equitable mortgage to arise, the creating instrument must "describe[] or identif[y]" "some particular property." (*Coast Bank, supra*, 61 Cal.2d at p. 314.) Indeed, the block-quoted passage above refers *three times* to "particular property" and once to "the property *so indicated*." (*Ibid.*, italics added.) It is undisputed, however, that the Note makes no reference to the Ranch or to any other property. Thus, Miner has not shown that the trial court abused its discretion in finding the Note did not establish an equitable mortgage on the Ranch.

III. *No Equitable Subrogation*

In a related argument, Miner contends the trial court erred by concluding she was not entitled to equitable subrogation.[4] Again, we find no abuse of discretion.

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4 " 'Subrogation is defined as the substitution of another person in place of the creditor or claimant to whose rights he or she succeeds in relation to the debt or claim. By undertaking to . . . pay the principal debtor's obligation to the creditor or claimant, the "subrogee" is equitably subrogated to the claimant (or "subrogor"), and succeeds to the subrogor's rights against the obligor.' " (*Morgan Creek Residential v. Kemp* (2007) 153 Cal.App.4th 675, 690 (*Morgan Creek*).)

Miner explained at trial why she paid off Williamson's mortgage with Wells Fargo:

> "We had both gotten divorced and I had to sell my home in La Mesa, in the divorce, so I had the cash in my account making . . . no interest . . . . [Williamson] had . . . a mortgage on his home. He was paying over 9 percent interest and it was adjustable and kept going up. We were paying mostly interest only on that loan, and clearly, he couldn't afford to keep making the payments. And more often than not it was coming out of my funds, which I couldn't afford to pay for a home that I didn't own. So he came up with the plan that I pay off his mortgage. He wanted to provide for my son Tim—he's handicapped—and [Williamson] thought he couldn't get life insurance because of his age, but he thought this would be a superb way of providing funds for Tim after he was gone. So he set the interest to be 6 percent compound interest. And because we were short of cash in those days, we opted not to pay any payments. The money was just to be considered an investment. I paid off his full loan."

Alluding to this testimony, the trial court's statement of decision provides the following explanation for the conclusion that Miner did not satisfy the prerequisites of equitable subrogation:

> " 'Certain prerequisites must be satisfied before a person, in paying a debt, may validly claim to be equitably subrogated to the rights of a secured creditor. [(1)] The payment must have been made by the subrogee to protect his interests; [(2)] the subrogee must not have acted as a volunteer; [(3)] the debt paid must be one for which the subrogee was not primarily liable; [(4)] the entire debt must have been paid; and [(5)] subrogation must not work an injustice to the rights of others.' [Citation.] [¶]
>
> "Here, [Miner] alleges that 'she and Mr. Williamson agreed that he did not have sufficient monies to make the monthly mortgage payments to Wells Fargo. She had monies she had acquired during her previous marriage which would be available to pay off that loan. Their joint agreement basically was that it would be better for her to receive the accrued interest . . . than have Wells Fargo receive it.' These facts clearly establish that [Miner] was not forced to pay off

> the existing mortgage to Wells Fargo in order to protect her interest, but instead did so voluntarily in order to receive interest on the funds. Therefore, [Miner] does not qualify as an equitable subrogee."

The statement of decision accurately recites the law regarding equitable subrogation. (See *Caito v. United California Bank* (1978) 20 Cal.3d 694, 704 [identifying the same five factors noted in the statement of decision]; 4 Miller & Starr, Cal. Real Estate (4th ed. 2016) § 10:113, p. 10-391.) As the trial court found, Miner's testimony explaining why she paid off Williamson's mortgage shows it was not done to "protect [her] interest[s]" in the Ranch (*Caito*, at p. 704), but rather, to increase the interest rate she was receiving on her funds—in other words, to enhance or expand her interests. We thus find no abuse of discretion in the trial court's conclusion that Miner was not entitled to equitable subrogation.

Miner cites *Smith v. State Savings and Loan Assn*. (1985) 175 Cal.App.3d 1092 and *Katsivalis v. Serrano Reconveyance Co*. (1977) 70 Cal.App.3d 200 to establish that the trial court erred by finding she was a "volunteer" and thus was not entitled to equitable subrogation.[5] Miner's reliance on these cases is misplaced. First, in addition to the trial court's finding that Miner was a mere volunteer (the second factor identified in *Caito*), the court also found Miner was not entitled to equitable subrogation because she did not act to protect her interests (the first factor identified in *Caito*). Miner does not

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[5] "Under California law, a party is considered a volunteer if, in making a payment, it has no interest of its own to protect, it acts without any obligation, legal or moral, and it acts without being requested to do so by the person liable on the original obligation." (*Morgan Creek, supra*, 153 Cal.App.4th at p. 690, fn. 11.)

explain how the cited authorities show the trial court erred in this regard. Second, the cases are distinguishable because the lenders in those cases executed contemporaneous deeds of trust (*Smith*, at p. 1095; *Katsivalis*, at pp. 206-207), whereas here Miner concedes there is no valid deed of trust because none was executed until five years after the loan (and three years after the Note).

This latter point emphasizes the overarching principle that equitable subrogation is more fundamentally a concept of lien *priority* than lien *creation*. (See *JP Morgan Chase Bank, N.A. v. Banc of America Practice Solutions, Inc.* (2012) 209 Cal.App.4th 855, 860; 4 Miller & Starr, Cal. Real Estate, *supra*, § 10:113, pp. 10-390-391 ["The doctrine of equitable subrogation is an *exception* to the general rule of lien priorities that 'first in time is first in right . . . .' "].) That is, it operates to protect a secured party whose security interest ought to be, but for technical reasons is not, senior to an intervening, otherwise-junior lienholder. (See *id.* § 10:115, pp. 10-398 ["The principle of subrogation applies to a lender who refinances a senior lien when there are existing junior liens . . . ."].) Miner's equitable arguments are not directed at her priority rights vis-à-vis other lien holders, but rather, at her purported lien rights vis-à-vis Williamson's estate. These interests are better addressed through Miner's claim for an equitable mortgage,[6] which we have already discussed.

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6 Miner implicitly acknowledged this in her briefing to the trial court when she stated equitable subrogation "was raised merely to reinforce the concept of equitable mortgage."

IV. *No Compensable Life Estate in the Ranch*

Miner contends the trial court erred by finding she has no compensable life estate in the Ranch. We disagree.

A. *Background*

1. *The Trust*

On the day he created the Trust, Williamson also amended it as follows to provide for Miner's use of the Ranch after his death:

> "At my death, provided Nancy L. Miner and I are living together, the trustee shall hold my residential real property for use by Nancy L. Miner as her residence.
>
> "The trustee shall hold sufficient trust assets in a reserve account to pay for: all costs of the real property including real property taxes, homeowners insurance, dues/fees, and assessments; and all maintenance and repairs.
>
> "Nancy L. Miner may also rent out the real property and receive the rental income. In that event she shall first apply the income to the above stated costs, maintenance and repairs.
>
> "At the death of Nancy L. Miner, or at the option of Nancy L. Miner, the trustee shall distribute the real property as part of the remainder of the trust estate."

The Trust provides that the trust estate be equally distributed among Miner and six of Williamson's seven children (the seventh had received her share while Williamson was alive).

2. *Miner's Trial Testimony*

Miner testified she intended to return to the Ranch after Williamson died, but Hall told her she could not. Miner added Hall did not adequately address issues that affected

the Ranch's habitability, particularly with respect to sanitizing the Ranch's water supply. Ultimately, Miner acknowledged the Ranch was habitable but not desirable; she (but not Hall) had keys to the Ranch; and she did not live there because it was inconvenient.

Miner also testified she approached Hall about renting out the Ranch, but said Hall was not receptive to the idea, and Hall's attorney told Miner she had no right to do so. Miner estimated she could have rented the Ranch's main house for approximately $2,500 per month, and the guest apartment for approximately $1,200 per month. In addition, Miner testified Scott Winder had been paying $300 per month—enough to pay the Ranch's property taxes—to live in a trailer on the Ranch, but Hall caused him to leave by "badger[ing] him . . . about his possessions."

Miner opined she had a life estate in the Ranch and maintained she had done nothing to abandon it. Miner introduced a Social Security Administration life-expectancy table that "shows the percentage of the life estate as opposed to the remainder estate."

3. *Hall's Trial Testimony*

Hall agreed the Ranch was habitable at the time Williamson died, and denied telling Miner she could not live there. To the contrary, Hall said it was Miner who impeded Hall's access to the property. Hall testified she nevertheless diligently addressed the issues that affected the Ranch's habitability, including by remedying the water sanitization issue within 10 days of being notified of it. Hall noted Miner still did not return to the Ranch.

Hall also testified she considered renting out the Ranch, but she "wasn't allowed access, so there was just no way to do that." She denied causing Winder to leave, and

explained he left because he bought a house so he could move in with his girlfriend. When Winder moved out, he left vehicles and trailers at the Ranch. Hall tried to negotiate with him to pay rent for storing them there, but Miner told him he did not have to. Winder stored his property at the Ranch rent-free for about seven months.

4. *Trial Court's Ruling*

The trial court construed the Trust and concluded it did not create a life estate for Miner, but instead allowed her to do "ONLY one of three things" with the Ranch: (1) use it as her residence; (2) rent it out; or (3) "opt to have the Trustee distribute the Ranch as part of the remainder of the Trust." The court found the evidence at trial showed Miner "elected not to reside at the Ranch and took no steps to rent it to a third party." The court also found Hall "worked very hard to clean and repair the premises to make them habitable." Further, the court found that "by threatening foreclosure, [Miner] chose an extreme version of the third option, which was to **force**, and not simply permit, the sale and hence, distribution[] of the property pursuant to the terms of the Trust." The court reasoned that by forcing the sale of the Ranch, Miner triggered "the occurrence of a contingency contemplated in the creating instrument—the sale of the property," which terminated Miner's interest in the Ranch. Thus, the court concluded, Miner was not entitled to compensation from the sale of the Ranch.[7]

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[7] The trial court was referring to compensation for loss of Miner's life estate interest. As the court made clear during closing arguments, Miner was still entitled to one-seventh of the sale proceeds as her share of the trust estate's distribution.

B. *Relevant Legal Principles*

" 'A life estate is an estate whose duration is limited to the life of the person holding it or of some other person. [Citation.] "It is not an essential requisite to the giving of a life estate, that it be expressly declared to be such, nor that the term 'life estate' shall be used." ' " (*Peterson v. Wells Fargo Bank, N.A.* (2015) 236 Cal.App.4th 844, 850-851.)

"[A]ll life estates are not created equal. Some are referred to as 'absolute' meaning that the owner thereof can do almost anything with his interest other than commit waste." (*Forrest v. Elam* (1979) 88 Cal.App.3d 164, 170 (*Forrest*); Civ. Code, § 818 ["The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance."].) "Others are known as determinable or contingent because of various sorts of limitations placed upon the life estate." (*Forrest*, at p. 170; *King v. Hawley* (1952) 113 Cal.App.2d 534, 539-540 ["It is elementary that a donee of the life estate may make only such disposition and use of the property he receives as is fairly authorized by the grant and consistent with the purposes thereof."]; 4 Miller & Starr, Cal. Real Estate, *supra*, § 12:21, p. 12-45 ["The grantor or testator creating or reserving a life estate can alter the correlative rights of the life tenant and the remainder interest holder by express provisions in the instrument."]; see *id.* § 12:24, p. 12-54 ["where the instrument creating the life estate expressly conditions the life estate on the continued occupancy by the life tenant, the life estate terminates if the life tenant does not reside on the premises"], citing *Taylor v. McCowen* (1908) 154 Cal. 798, 803-805.)

Forrest involved a life estate that "was not absolute." (*Forrest, supra*, 88 Cal.App.3d at p. 170.) The decedent granted her son Fern a life estate in certain real property " 'for so long as he lives upon the property, and upon his removal from the property, or upon his death, then the property is to be distributed to those children living at that time, share and share alike.' " (*Id.* at p. 167.) Fern wanted to sell the property and deduct the value of his life estate from the sale proceeds before distributing the remainder among himself and his then-living siblings. (*Ibid.*) However, the trial court found Fern abandoned the property—and thus his life estate interest—by pursuing a successful partition action. (*Id.* at pp. 167, 170.) The Court of Appeal agreed that because Fern effectively "removed" himself by effectuating the partition sale, he triggered a terminating condition that—as a matter of law—rendered the value of his life estate "zero." (*Id.* at p. 172.)

We review de novo the trial court's interpretation of the Trust. (*Burch v. George* (1994) 7 Cal.4th 246, 254.) We review the trial court's factual findings for substantial evidence. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.)

C. *Analysis*

Interpreting the Trust de novo, we conclude it granted Miner at most a conditional life estate in the Ranch. First, we note the Trust did not convey any form of title to Miner. (See, e.g., 4 Miller & Starr, Cal. Real Estate, *supra*, § 12:20, p. 12-40 [although no particular language is required, "*To A* for life" creates a life estate for A], italics added.) Instead, it provided that "*the trustee* shall hold [the Ranch] for use by . . . Miner as her residence." (Italics added.) Nor did the Trust grant Miner *absolute* use of the

Ranch. To the contrary, as the trial court found, the Trust granted Miner three specific options: (1) use the Ranch "as her residence"; (2) "rent out the [Ranch] and receive the rental income"; or (3) if she had not yet died, opt to have the trustee "distribute the [Ranch] as part of the remainder of the trust estate." These limitations show the Trust created a conditional life estate.

Our conclusion is supported by Miner's own briefing to the trial court in opposition to Hall's motion seeking authorization to sell the Ranch. There, Miner stated: "By any reading of the trust instrument, Nancy L. Miner is a holder of some sort of hybrid right to occupy the property for life. It may be called a 'life estate,' but it varies markedly from what has come to be known as a life estate in the real property industry."

Having found the trial court properly construed the Trust, we also find substantial evidence supports the court's findings that Miner abandoned her right to use the Ranch as her residence or to rent it out but, instead, invoked her option to have it distributed "as part of the remainder of the trust [estate]." The record shows the Ranch was—due to Hall's "very hard" "work[]"—habitable after Williamson died. Miner had keys to the Ranch and Hall did nothing to impede her from returning. Instead, Miner purchased a condo and chose to live there. Indeed, she acknowledged at trial that it would have been "inconvenient" for her to reside at the Ranch.

The record also shows that although Miner testified *she* was interested in renting out the Ranch, Hall contradicted this testimony by stating she (Hall) was interested in renting out the Ranch but was impeded from doing so by Miner. Moreover, not only did Miner not rent out the Ranch—which she acknowledged could yield approximately

$3,700 per month—she allowed Winder to store his vehicles and trailers there rent-free for seven months, thereby forgoing rent that was sufficient to cover the Ranch's property taxes.

Finally, substantial evidence supports the finding that "by threatening foreclosure, [Miner] chose an extreme version of the third option, which was to **force**, and not simply permit, the sale and hence, distribution[] of the property pursuant to the terms of the Trust." Miner acknowledged she knew when she made her demand on the Note that the trust estate lacked the liquid assets to satisfy the Note. She also knew the estate lacked the assets to pay the Ranch's accrued and ongoing expenses. Thus, she consented to—and, effectively, *compelled*—its sale, effectively invoking the third option. Like Fern in *Forrest*, by doing so, Miner terminated her interest in the Ranch and fixed the value of her life estate interest at zero. (*Forrest, supra*, 88 Cal.App.3d at pp. 171-172.) Thus, the record supports the trial court's finding that Miner did not have a compensable life estate interest in the Ranch.

Miner's reliance on *Estate of Giacomelos* (1961) 192 Cal.App.2d 244 and *Estate of Malpas* (1992) 7 Cal.App.4th 1901 to support a contrary conclusion are unavailing. Although both cases recognize in differing contexts that a life estate is a distinct property interest that may be compensable (*Estate of Giacomelos*, at p. 246; *Malpas*, at p. 1908), neither case addresses compensability in the context of a life tenant who triggers a condition that effectively terminates the life estate under the creating instrument's terms. (See *Forrest, supra*, 88 Cal.App.3d at p. 172 [distinguishing *Estate of Giacomelos* on this basis].)

V. *Miner's Claim on the Note Is Time-Barred*

Miner contends the trial court erred by finding any remaining right Miner may have had to collect on the Note was time-barred by her failure to file a claim with the estate or to file an action within one year of Williamson's death. Because "[t]he application of the statute of limitations on undisputed facts is a purely legal question," our review is de novo. (*Aryeh v. Canon Business Solutions, Inc*. (2013) 55 Cal.4th 1185, 1191.)

"Part 8 of the Probate Code[8] (§ 19000 et seq.) governs claims procedures, including notice requirements and time limitations, for revocable trusts of deceased settlors." (*Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 254 (*Wagner*).) Section 19003, subdivision (a) authorizes a trustee to initiate a notice procedure that provides for accelerated deadlines by which estate creditors must submit claims. (*Wagner*, at pp. 254-255.)[9] If a trustee complies with these notice provisions, no creditor may collect from trust assets or maintain an action to do so unless it first timely submits a claim in conformance with the Probate Code. (§ 19004, subds. (a)-(c); see *Wagner*, at p. 254.)

"A trustee is not required to utilize this formal claims procedure and, as an alternative, may proceed informally in administering a decedent's trust." (*Wagner, supra*, 162 Cal.App.4th at p. 255.) "If no probate or trust claims procedure has been

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8 All further undesignated statutory references are to the Probate Code.

9 Section 19100, subdivision (a) provides as follows: "A creditor shall file a claim before expiration of the later of the following times: [¶] (1) Four months after the first publication of notice to creditors . . . . [¶] (2) Sixty days after the date actual notice is mailed or personally delivered to the creditor."

initiated, . . . the short limitations periods applicable to claims filed in probate or trust claims proceedings do not apply; and the availability of trust property to any creditor of the deceased settlor 'shall be as otherwise provided by law.' " (*Embree v. Embree* (2004) 125 Cal.App.4th 487, 494, quoting § 19008; see *Wagner*, at p. 255.) "Thus, absent a trustee's election to file a formal notice to claimants, the time to assert a claim against a decedent's revocable trust is governed by the more general statute of limitations for all claims against a decedent embodied in Code of Civil Procedure section 366.2." (*Wagner*, at p. 255.)

"Code of Civil Procedure section 366.2 provides for an outside time limit of one year for filing any type of claim against a decedent." (*Dobler v. Arluk Medical Center Industrial Group, Inc*. (2001) 89 Cal.App.4th 530, 535.) The statute states: "If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply." (Code Civ. Proc., § 366.2, subd. (a).) The Legislature's intent in enacting this provision " 'was to protect decedents' estates from creditors' stale claims.' " (*Levine v. Levine* (2002) 102 Cal.App.4th 1256, 1263, 1264.)

Based on our de novo review, we conclude on the record before us that Miner is time-barred from pursuing a contract-based action to collect on the Note. No probate was opened, and the record does not indicate whether Hall provided the statutory notice to creditors that triggers the accelerated deadlines for submitting claims. Accordingly, we

will apply Code of Civil Procedure section 366.2's one-year limitation period. However, even under that standard, Miner's claim is untimely.

Williamson died on December 3, 2011. Yet, Miner did not file her "cross action to foreclose equitable mortgage" until January 9, 2013, more than one month beyond the statute of limitations. Thus, even assuming Miner's action to foreclose on a purported equitable mortgage could be construed as an action on the Note, the action was untimely.

Miner contends we should use the filing date of *Hall*'s petition for purposes of determining the timeliness of *Miner*'s claim. Miner cites no authority to support this proposition. "Contentions on appeal are waived by a party who fails to support them with reasoned argument and citations to authority." (*Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1303; Cal. Rules of Court, rule 8.204(a)(1)(B).) In any event, even if Hall's petition could theoretically constitute a claim by Miner, the only relief the petition sought with respect to the Note was a declaration that it was unsecured. The petition did not address Miner's right to recover under the Note, standing alone. Consequently, Hall's petition did not satisfy Miner's obligation to timely commence an action.

Miner next contends Code of Civil Procedure section 366.2 does not apply because at the time of Williamson's death she had not yet made a demand on the Note; thus, "there was no existing obligation to pay" and, hence, no cause of action for breach of the Note. To support this proposition, she cites *Battuello v. Battuello* (1998) 64 Cal.App.4th 842, which involved an alleged breach of a promise to leave certain property in a will. (*Id.* at p. 844.) *Battuello* is distinguishable. The Legislature has since enacted

a separate statute of limitations specifically to govern claims like that asserted in *Battuello*, thus recognizing such claims are different from conventional contract claims against decedents. (See Code Civ. Proc., § 366.3; *Stewart v. Seward* (2007) 148 Cal.App.4th 1513, 1522, fn. 6 ["*Battuello* preceded the enactment of (Code Civ. Proc.) section 366.3"].)

Miner argues—*admittedly* for the first time on appeal—that Hall should be equitably estopped from asserting the statute of limitations as a defense. "New theories of defense, just like new theories of liability, may not be asserted for the first time on appeal." (*Bardis v. Oates* (2004) 119 Cal.App.4th 1, 13, fn. 6.) Accordingly, we do not consider the argument.

DISPOSITION

The judgment is affirmed. Hall is entitled to her costs on appeal.

HALLER, J.

WE CONCUR:

NARES, Acting P. J.

IRION, J.